

S.B. CIVIL WRIT PETITION NO.6560/1998
Laddu Vs. State of Raj. & Anr.

Date of order : 24/7/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Ms. Anita Jain for the petitioner.
Shri B.N. Sandu, Dy. Government Advocate
for the State.

The petitioner has challenged the letter dated 21.3.1996 by which the Tehsildar Khandar, Distt. Sawaimadhopur has demanded from him a sum of Rs.34,650/- under Rule 17 of the Rajasthan Colonisation (Medium & Minor Irrigation Projects Government Lands Allotment) Rules, 1968 (for short - the Rules of 1968) as the reserve price for the land allotted to him.

Facts of the case are that the petitioner being a landless person was allotted land in khasra no.503 measuring

6 bighas and in khasra no.474, measuring 2 bigha 4 biswas in revenue village Daulatpura in Tehsil Khandar of Distt. Sawaimadhopur vide allotment letter dated 19.7.73. This allotment was made under Rule 14 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes), Rules, 1970 (for short - 'the Rules of 1970') on recommendations of the Advisory Committee formed as per Rule 13 thereof.

I have heard Ms. Anita Jain, the learned counsel for the petitioner and Shri B.N. Sandu, the learned Additional Government Advocate.

Ms. Anita Jain, the learned counsel for the petitioner argued that the land having been allotted to the petitioner under Rule 14 of the Rules of 1970, the

premium as per the reserve price according to Rule 17 of the Rules of 1968 could not be demanded. He argued that the allotment under the Rules of 1970 were subject to the conditions either given in the allotment letter or under those rules. Subsequently, if the area in which the land is situated is declared as medium and minor irrigation project, premium as per the reserve price fixed under such rules cannot be retrospectively realised from the petitioner to whom the land was allotted under another set of rules viz. Rules of 1970 in consideration of the fact that he was landless person. She argued that no opportunity of hearing was provided to the petitioner prior to passing of the impugned order. An order having civil

consequences cannot be passed without notice to the affected person. It was further argued that after expiry of period of 10 years from the date of allotment on 19.7.1973, the petitioner acquired khatedari rights in the said land on 19.8.1983 in terms of Rule 18 of Rules of 1970. The respondents thereafter could not by impugned order demand from him the reserve price on such allotment. Contrary to the scheme of the Rules of 1970 thereafter mutation of the land was made in favour of the petitioner on 30.4.1975.

On the other hand, Shri B.N. Sandu, the learned Additional Government Advocate argued that subsequent to the allotment of the land to the petitioner on 19.7.1973 but before he could acquire

khatedari rights in 1983, the area in which the disputed land was located was vide notification dated 28.1.1971 declared as Mansarovar Minor Irrigation Project. This notification was published in the gazette of Rajasthan on 29.5.1975. Allotment of the land in an area falling in the minor irrigation project could be made only on payment of the premium. Till the petitioner acquired khatedari rights, he remained a gair khatedar tenant and did not acquire any right in the land. Mutation of the land in favour of the petitioner would not make any difference. Since the demanded amount was statutorily realisable to premium on the reserve price, even if opportunity of hearing was not afforded to the petitioner, no prejudice was thereby caused to him.

Impugned notice is perfectly legal and valid and therefore, the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

A perusal of the scheme of Rules of 1970 clearly indicate that except the lands which are covered by Rule 4 thereof, other unoccupied lands referred to in Rule 5 could be allotted by issue of proclamation inviting applications under Rule 7 thereof as per the eligibility and priority fixed under Rule 11 thereof. According to Rule 13 of the Rules of 1970 these allotments are required to be made in consultation with an Advisory Committee. The allotments are

made under Rule 14 subject to conditions enumerated therein. On expiry of period of 10 years, the allottees are conferred with khatedari rights as per Rule 18 of the Rules of 1970. A perusal of Rule 11 would show that in the order of priority of eligible persons, the landless agriculturists are also included under sub-rule 3(f).

When the Rules of 1970 are compared with the Rules of 1968, it would appear that latter rules have been framed by the Government in exercise of its powers conferred upon it under the Rajasthan Colonization Act, 1954 and are intended to be applied to the areas which are served by medium and minor irrigation projects. As to what would be the "medium and minor irrigation projects", has been

defined in Rule 3, sub-rule (7) of the Rules of 1968 to mean "all irrigation projects excluding Gang Canal, Chambal, Jawai, Rajasthan Canal and Bhakra and such other projects as may be excluded from time to time by the State Government by notification published in the Official Gazette from the purview of these rules." The mechanism similar to the one given in the Rules of 1970 for allotment of the lands irrigated by medium and minor projects, has also been provided in the Rules of 1968. Rule 5 of the Rules of 1968 provides that the persons eligible for allotment of government lands includes the landless persons. Rule 8 provides that subject to the terms and conditions specified in the Rajasthan Colonisation (General Colony),

Conditions, 1955, all allotments of Government lands under these rules shall be on permanent basis, the allottee being eligible to the conferment of khatedari rights unless otherwise stated. Procedure of the allotment has been given under Rule 11 and 12 of the Rules. Rule 13 provides that all allotments shall be made by the Allotting Authority in consultation with an Advisory Committee. Rule 17 provides that the State Government shall fix the scales of reserve prices which may be charged for Government lands allotted under these rules, which may be different for different areas and different classes of land. The price fixed shall be realised in 10 half yearly installments. It is thereafter that Rule 17-A for initiation

of proceedings, whereunder notice has been given to the petitioner, provides that the Collector of the District shall have the power to cancel any allotment made under these rules, either suo moto or on the application of any person, in case the allotment has been secured through fraud or misrepresentation, or has been made against the rules or in case the allottee has committed breach of any of the conditions of allotment. The proviso of the said Rule however requires the Collector to give opportunity of hearing to the person against whom the order is proposed to be passed.

A perusal of the different rules of the Rules of 1968 thus does not indicate that even though the allotment of the land has been made under the Rules of

1970 and in other words, even if the allotment of the land has not been made under the Rules of 1968 yet the premium of the land as per the reserved price fixed under Rule 17 can be charged.

Allotment to the petitioner was made under the Rules of 1970 on 29.7.1973 and mutation of the land in dispute was opened in his favour on 30.4.1975. Merely because the area in which the disputed land is located was notified as Mansarovar Medium & Minor Irrigation Project vide notification dated 28.1.1971 which was published in the gazette dated 29.5.1975 before the petitioner acquired khatedari rights on 29.7.1983, the respondents cannot on that basis compel the petitioner to make payment of the premium amount. Even otherwise, the

notification dated 28.1.1971 so long as it was not published in the Gazette which as per the own showing of the respondent was in fact published in gazette of Rajathan on 29.5.1975 cannot have any binding effect as against the petitioner.

The respondents have not been able to substantiate that either the allotment to the petitioner was made under the Rules of 1968 or otherwise violated any condition of the allotment made to him. They also have not been able to prove to the satisfaction of this Court that payment of premium as has now been demanded is one of the conditions of the allotment made to the petitioner. In impugned notice, the demand of Rs.22,500/- as premium and Rs.13,150/- as interest thereabout does not therefore

find support from any of the rules. This order having been passed without the authority of law cannot be sustained in law and is therefore liable to be set aside.

In the result, the writ petition is allowed. The impugned order dated 21.3.1996 is set aside.

(Mohammad Rafiq), J.

RS/-